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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/676,670	10/02/2000	George H. Scherr		4775

7590 10/22/2002  
George H Scherr Ph D  
33 Monee Road  
Park Forest, IL 60466

EXAMINER

SHARAREH, SHAHNAM J

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 10/22/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/676,670

Applicant(s)

SCHERR, GEORGE H.

Examiner

Shahnam Sharareh

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 July 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-104 is/are pending in the application.
- 4a) Of the above claim(s) 20-76 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 77-90 is/are allowed.
- 6) ☒ Claim(s) 91-104 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 20-76 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

### **DETAILED ACTION**

Amendment filed on July 15, 2002 has been entered. Claims 20-104 are now pending.

### ***Election/Restrictions***

Applicant originally elected of Group I, claims 1-19 in Paper No. 3 without traverse. (MPEP § 818.03(a)). Claims 20-54 were then withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention, there being no allowable generic or linking claim.

Newly submitted claims 55-76 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons set forth in Paper No. 3 as they are directed to invention Group II.

Claims 77-104 read on the originally elected invention, Group I (original claims 1-19). Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 77-104 read on the original election and are now under consideration, but claims 20-76 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claims 77-90 are found to be free of art and thus allowable.

### ***Response to Amendment***

Any rejection that is not addressed in this Office Action has been withdrawn.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 91-104 are rejected under 35 U.S.C. 102(b) as being anticipated by Scherr US Patent 5,718,916 or Patel US Patent 5,470,576.

Claims 91-104 are drafted as "product by process" claims. Accordingly, product by process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps (see MPEP 2113). "Even though product - by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product - by - process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe , 227 USPQ 964, 966 (Fed. Cir. 1985).

Scherr discloses water insoluble alginate sponges (abstract, examples 6-8, col 11-12). Thus, Scherr anticipates the limitations of the instant claims.

Patel teaches the use of similar alginate compositions as wound dressings on absorbent pad or bandages by impregnating the with the alginate composition (see abstract, col 7, lines 4-60). Thus, Patel anticipates the limitations of the instant claims.

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***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahnam Sharareh whose telephone number is 703-306-5400. The examiner can normally be reached on 8:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, PhD can be reached on 703-308-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1123.

ss  
October 20, 2002

  
RUSSELL TRAVERS  
PRIMARY EXAMINER  
GROUP 1200